SERVED: January 11, 2002

NTSB Order No. EA-4931

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of January, 2002

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. CHRISTOPHER A. STEPOVICH, Respondent.	Docket SE-15812

OPINION AND ORDER

The Administrator has appealed from the written initial decision of Administrative Law Judge William A. Pope, II, issued on June 23, 2000, following an evidentiary hearing.[1] The law judge dismissed an order of the Administrator, on finding that respondent had not been shown to have violated 14 C.F.R. 91.13(a) of the Federal Aviation Regulations ("FAR," 14 CFR Part 91), in connection with an accident that occurred on an approach to

[1] The initial decision is attached.

landing at St. Mary's, Alaska, on February 11, 1999, in which the aircraft was destroyed and respondent was seriously hurt.[2] We deny the appeal.

Respondent was the pilot-in-command and sole occupant of a Beech 1900C being used in mail service by Alaska Central Express, Inc. It was snowy and windy the night of February 11, and respondent crashed a few miles short of the runway.[3] He testified to having no memory of events between setting the altimeter bug to 1,650 feet, keying the runway lights at 7.5 DME,[4] and then finding himself in the snow.

The Administrator alleges that, under the Lindstam doctrine, respondent was careless or reckless. Administrator v. Lindstam, 41 C.A.B. 841 (1964), and following cases hold that the Administrator need not allege or prove specific acts of carelessness to support a violation of section 91.9 (now 91.13(a)). Instead, using circumstantial evidence, she may establish a prima facie case by creating a reasonable inference that the event would not have occurred but for carelessness on respondent's part. The burden then shifts to respondent to come forward with an alternative explanation for the event sufficient

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[2] Section 91.13(a) prohibits careless or reckless operations that could endanger the life or property of another.

[3] The record does not clearly establish the location of the crash. At various times during the hearing, witnesses spoke of the crash site being both 3 and 4 miles short of the runway. See, e.g., Transcript (Tr.) at 13 (about 3 miles), 23 (4 miles), 38 (3 miles), 251 (4 miles).

[4] Distance Measuring Equipment. That is, 7.5 miles from the airport.

to cast reasonable doubt on (i.e., overcome the inference of) the Administrator's claim of carelessness.

Respondent offered two witnesses -– pilots who were familiar with St. Mary's in particular and Alaska flying in general. The thrust of both of their testimonies was, in the words of one, that St. Mary's weather was "squirrely [sic]," Tr. at 142, and that unexpected turbulence could have caused the very heavily-loaded aircraft to plummet uncontrollably into the ground. Respondent's witnesses assumed that he had set himself up properly to fly the approach and that nothing would have interfered with him properly doing so. Therefore, they concluded, unexpected weather must have caused the problem.[5]

The Administrator posits, instead, that respondent fell asleep, misread his altitude, or lost situational awareness in the snow and tundra. Her rebuttal witness did not believe that the weather was so bad as to cause such a downdraft to force the aircraft nose down into the ground, nor, he testified, was severe turbulence a problem in the St. Mary's area because the surrounding land was gentle hills, not dramatic altitude changes.[6]

The law judge concluded that the Administrator had not

[5] Respondent's case also speculated that the load might have shifted to make the plane uncontrollable in the wind. However, as the Administrator notes, Lindstam requires more than mere speculation to shift the burden of going forward.

[6] Thus, there would be no serious mechanical downdrafts. He also testified there could be no real convective activity to cause turbulence in winter snowstorms.

adequately rebutted what, to him, had been demonstrated to be a reasonable possibility, and we are forced to agree. As noted, we agree with the Administrator that a respondent must do more than offer possibilities; he must demonstrate a reasonable alternative reason for the event other than pilot error. The difficulty here is that there is no eyewitness to what actually happened, and there are no data to show how the aircraft behaved after it left 2,200 feet (the last point respondent remembers).[7] The Administrator offered little better in the way of weather testimony than what we agree was weak evidence presented by respondent.[8] No meteorologist, or even a pilot with sufficient specialized weather training, was offered in rebuttal. Instead, we were offered merely another, albeit extremely experienced, pilot to testify to his experience, rather than someone who could testify, scientifically, to what the weather in the relevant area would be and how exactly it would or could affect the aircraft. Further, the Administrator did nothing to rebut the allegation that the weather aloft could have been far worse than that measured on the ground at the airport a few miles away. The facts here are far different from those in Administrator v. Ewert, NTSB Order No. EA-3522 (1992), cited by the Administrator,

[7] The Administrator does not challenge respondent's credibility on this point.

[8] We agree with the Administrator that respondent would not be excused if he failed properly to react to expected weather. There is no showing that this was the case here. Respondent's witnesses talked of unexpected or severe downdrafts or turbulence. The Administrator did not prove otherwise. See

(continued…)

where credibility findings in great part led the law judge to reject the alternative downdraft explanation, and there was eyewitness testimony to the lack of any turbulence. In view of the above, and the law judge's credibility conclusion in respondent's favor, we are compelled to conclude that the Administrator has not met her burden of proof.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and

2. The complaint is dismissed.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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(continued…)
infra and Initial Decision at fn. 21.